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WORKING SESSION MEMORANDUM

DATE: October 11, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
Dori Zaleznik, Commissioner of Health & Human Services
Marie Lawlor, Assistant City Solicitor
James Freas, Chief Planner, Long-Range Planning

RE: #309-13: DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

EXECUTIVE SUMMARY

With the passage of the Department of Public Health (DPH) regulations permitting registered marijuana dispensaries (RMDs) and progress by numerous potential medical marijuana service providers through the first phase of this permitting process, it has become important for Newton to prepare appropriate local land use regulations to govern this potential use in the City. The proposed amendment includes three primary components: 1) identifies the districts in which the RMD use will be allowed and establishes that the use will only be allowed by Special Permit; 2) describes the submittal requirements to be included in an RMD application; and 3) establishes special permit criteria unique to this use.

BACKGROUND

The State of Massachusetts legalized the use of marijuana for medical purposes in a 2012 referendum and DPH issued regulations governing the siting and operation of RMDs and the methods by which the

drug can be prescribed to patients in 2013. The regulations serve two primary objectives: 1) to strictly control the distribution of the drug so that only those with a legitimate medical reason will have access; and 2) to avoid the promotion of the use of marijuana outside of medicinal purposes. Towards those ends, the regulations focus on security of the premises and operations, the prescription process, and the location and nature of the growing areas and dispensaries. The State regulations are both comprehensive and carefully considered and state regulators clearly drew lessons from the experiences of other states where medical marijuana is permitted. These regulations were summarized in the Planning Department memo provided for the September 23rd meeting of the Zoning and Planning Committee.

A working group composed of Candace Havens, Director of Planning and Development; Dori Zaleznik, Commissioner of Health & Human Services; Marie Lawlor, Assistant City Solicitor; Howard Mintz, Chief of Police; and Aldermen Greg Schwartz and Brian Yates have analyzed these regulations and developed the draft zoning ordinance amendment presented below and attached.

PROPOSED AMENDMENT

The proposed amendment includes three primary components: 1) identifies the districts in which the RMD use will be allowed and establishes that the use will only be allowed by Special Permit; 2) describes the submittal requirements to be included in an RMD application; and 3) establishes special permit criteria unique to this use.

Location and Special Permit Requirement

In identifying the districts to consider where RMDs would be allowed, the working group considered the likely nature of the proposed use as defined by the DPH regulations and the locational requirements already defined in those regulations. Given the still unknown aspects of these facilities and a desire for close review, the working group recommends the use be allowed by special permit only.

The DPH regulations strictly limit the number of RMDs statewide and by county and clearly indicate that geographic dispersion will be an important factor in their selection of which RMD applications to permit. By these factors, it is likely that DPH will favor regionally-accessible locations near highways and public transit services. Coupled with the extensive security protocols required by the regulations, the nature of the resulting RMDs will likely be highly suburban favoring stand-alone commercial buildings. Building design will likely not be pedestrian-friendly in the sense that there will not be engaging storefront windows and the use will likely not be highly active in the sense of generating a great deal of foot traffic. For these reasons, the RMD use is likely inappropriate for Newton's villages where active uses and pedestrian-friendly design are key components of the City's economic development strategy and efforts to improve village vitality. The working group therefore focused attention on those zoning districts where a use exhibiting these characteristics might be most appropriate, narrowing the choice down to Business 2 and 5 and Mixed-Use 1.

Based on the limited districts identified and the special permit requirement, the working group concluded that the buffer areas identified in the DPH regulations were generally sufficient and is thus recommending 500 foot buffers on schools, daycare facilities, places of worship, and other places where children commonly congregate. The special permit is specifically identified as being non-transferable and only valid for a permitted RMD while its permit remains valid.

Submittal Requirements

There are a number of additional submittal requirements proposed for RMDs in order to allow necessary review of a given proposal in the special permit process. Most of these submittal requirements are self-explanatory and listed in the attached draft ordinance language. The list of submittals includes a transportation analysis so that both the transportation impacts of the proposed use can be understood and also to allow for the identification of an appropriate parking requirement. As a new use, there are not sufficient studies or models for parking requirements to draw on and, in this instance the best course is to rely on a direct study of the proposed use. The State regulations already require an applicant to identify their anticipated service area and demand and this information would readily form the basis of a transportation analysis. The proposed submittal requirements in the draft ordinance language also includes a context map, which would allow staff and the Board to readily identify those nearby uses that might be incompatible with a proposed RMD such as a facility where children commonly congregate.

Special Permit Criteria

The special permit criteria are intended to reinforce the requirements of the DPH regulations and advance local interests with regard to the possible impacts of a RMD. To that end, these criteria include consideration of compatibility with the surrounding area, access to regional transportation facilities, and consideration of security and law enforcement concerns.

NEXT STEPS

If the Zoning and Planning Committee concludes that the proposed draft Registered Marijuana Dispensaries zoning ordinance amendment is ready for public review and comment, staff recommends this item be scheduled for a Public Hearing on November 13, 2013. If further consideration is necessary, staff requests the Zoning and Planning Committee define what additional data and analysis it may need to inform further discussion. Staff is prepared to hold an additional meeting of the Committee on October 22 should further discussion be necessary.

Enclosures

Attachment A

Proposed Ordinance Language to allow Registered Marijuana Dispensaries

Add the following definition to 30-1:

Marijuana Dispensary, Registered. Registered Marijuana Dispensary, also known as RMD or Medical Marijuana Treatment Center, shall mean an establishment properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments) transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

Add the following new section:**30-36. Registered Marijuana Dispensaries**

(a) *Purpose.* The purpose of this section is to provide for the limited establishment of registered marijuana dispensaries (“RMD”) within the City as they are authorized pursuant to state regulations set forth in 104 CMR 725.000. Since RMD’s are strictly regulated and will be limited in number by the Massachusetts Department of Public Health, the intent of this section is to permit RMD’s where there is access to regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where they will not adversely impact the character of residential neighborhoods and business districts.

(b) *RMD uses not allowed as-of-right.* RMD uses are not included within the definition of retail sales or services, agriculture, or any other lawful business permitted as of right or by special permit as provided in Chapter 30.

(c) *RMD uses allowed by special permit.* Use of land, buildings or structures for RMD’s shall be allowed only by special permit pursuant to section 30-24 in the following districts, subject to the requirements and criteria of this section: Business 2; Business 5; and Mixed Use 1.

(d) *Minimum criteria and limitations on approval.*

(1) An RMD shall not be located within a radius of five hundred (500) feet from a school, daycare center, preschool or afterschool facility or any facility in which children commonly congregate, measured in a straight line from the nearest property line of the proposed RMD to the nearest property line of the facility.

(2) An RMD shall not be located within a radius of five hundred (500) feet from a house of worship or religious use, measured as specified in (d)(1) above.

(3) An RMD shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations and all other applicable state and local

laws, rules and regulations. No building permit or certificate of occupancy shall be issued for an RMD that is not properly registered with the Massachusetts Department of Public Health.

(4) A special permit granted by the board of aldermen authorizing the establishment of an RMD shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the RMD has been authorized by the special permit. If the registration for the RMD is revoked, transferred to another controlling entity, or relocated to a different site, a new special permit shall be required prior to the issuance of a certificate of occupancy.

(5) An RMD shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home delivery to qualified clients pursuant to applicable state regulations.

(6) An RMD shall conform to the dimensional requirements applicable to the zoning district in which it is located.

(7) Notwithstanding anything to the contrary in section 30-19, the required number of parking spaces for an RMD shall be determined by the board of aldermen based on the transportation analysis provided by the applicant

(8) All signage shall conform to the requirements of state regulations and of this ordinance. The board of aldermen may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.

(e) *Special permit application and procedure*

In addition to the requirements of section 30-24, an application for special permit shall include, at a minimum, the following information:

(1) *Description of Activities:* A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIP's), on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.

(2) *Service Area:* A map and narrative describing the area proposed to be served by the RMD and the anticipated number of clients that will be served within that area. This description shall indicate where any other RMD's exist or have been proposed within the expected service area.

(3) *Transportation Analysis:* A quantitative analysis, prepared by a qualified transportation specialist acceptable to the director of planning and development, modeling the expected origin and frequency of client and employee trips to the

site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site.

(4) *Context Map:* A map depicting all properties and land uses within a minimum one thousand (1,000) foot radius of the proposed site, whether such uses are located in Newton or within surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs.

(5) *Site Plan:* A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of automobile and bicycle parking, the location of pedestrian, bicycle and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type and direction of all outdoor lighting on the site, and any landscape design.

(6) *Building Elevations and Signage:* Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are recommended but not required.

(7) *Registration Materials:* Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to that department for the purpose of seeking registration, to confirm that all information provided to the board of aldermen is consistent with that provided to the Massachusetts Department of Public Health.

(f) *Special Permit Criteria.* In granting a special permit for a Registered Marijuana Dispensary, in addition to the general criteria for issuance of a special permit as set forth in section 30-24 of this ordinance, the board of aldermen shall find that the following criteria are met:

(1) The RMD is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by another RMD, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.

(2) The site is located at least five hundred (500) feet distant from a school, daycare center, preschool or afterschool facility or any facility in which children commonly congregate, or from a house of worship.

(3) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and users of public transportation.

- (4) Traffic generated by client trips, employee trips, and deliveries to and from the RMD shall not create a substantial adverse impact on nearby residential uses.
 - (5) Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
 - (6) The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.
 - (7) The building and site are accessible to persons with disability.
 - (8) The site is accessible to regional roadways and public transportation.
 - (9) The site is located where it may be readily monitored by law enforcement for health and public safety purposes.
- (g) *Severability.* If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.